IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2283 OF 1999

Ratnagiri Agricultural Produce
Market Committee & anr .. Petitioners

versus

Secretary, Department of Food,
Civil Supplies & Consumer Protection
and ors. .. Respondents

Mr.R.D.Soni for Petitioners

Ms.S.S.Bhende, Assistant Government Pleader
for Respondents

CORAM : S.B.MHASE AND
D.G.KARNIK, JJ

DATED : 8th February, 2006

P.C.

1. By this petition, the petitioners seek a writ of certiorari for quashing and setting aside the letter dated 20th May, 1998 written by the respondent no. 1 rejecting the claim of the petitioner for refund of the market fee/cess collected by it from the fair price shops located in the market area.

2. The petitioner no.1 is an agricultural produce market committee constituted under the Maharashtra

Agricultural Produce Marketing (Regulation) Act, 1963 (for short the Act) and the petitioner no.2 is its Chairman. Section 31 of the Act, empowers the petitioner to levy and collect fees (hereinafter referred as the "market fee") in the prescribed manner and at such rate as may be decided by it (but, subject to the minimum and maximum rates which may be fixed by the State Government by Notification the Official Gazettee) from every purchaser of agricultural produce marketed in its market area. Accordingly, the petitioner no. 1 has been levying the fee (hereinafter referred to as the market fee) on the notified agricultural produce marketed in its market area. The government has granted licences to several persons for establishment of fair price shops for distribution of the foodgrains in different parts of the State. Some of the fair price shops are situated in the market area of the petitioner no.1. In the past, the petitioner no.1 had been levying market fee and cess on the agricultural produce and in particular paddy sold in the fair price shops situated within its market area. The issue of levy and collection of market fee/cess in respect of the food grains sold in the fair price shops situated in the various market areas situated in the State was under the consideration of the government. It appears that

pending decision thereon the government was collecting the market fee/cess in respect of the agricultural produce sold in fair price shops on behalf of the market committees. Learned counsel for the petitioner states that accordingly the market fee/cess payable to the petitioner no 1 in respect of the agricultural produce sold in fair price shops situated within its market area was collected by the government between the years 1985 to 1989. Only after the year 1989, the petitioner no.1 was allowed to collect the market fee/cess in respect of the agricultural produce sold in the fair price shops situated within its jurisdiction.

3. As the market fee/cess was collected by the government on behalf of the petitioner no. 1 during the period between 1985 to 1989, the petitioner no.1 made an application to the government for refund of the market fee/cess collected by the government on its behalf from the fair price shops owners who were liable to pay. By the impugned letter dated 20th May, 1998 the respondent no. 1 rejected the request of the petitioners. That communication is impugned in the petition.

4. We have already indicated that section 31 of the Act empowers the Market Committee to levy and

collect fees in the prescribed manner from every purchaser of agricultural produce marketed in the market areas. It is not disputed that agricultural produce namely paddy is being sold in the fair price shops situate in the market area to the petitioner no.1. Market fee/cess was therefore payable in respect of the paddy which is an agricultural produce sold in the fair price shops situated in the market area of the petitioner no. 1. In Maharashtra State Market Committee Cooperative Federation Ltd vs Secretary, Food, Civil Supplies and Consumer Protection Department (Writ Petition No. 3634 of 1999 decided by us on 12th January, 2006) we have held that a market fee/cess is payable on the sale of agricultural produce sold in fair price shops situated in the market area of any market committee and State has no power to stay the levy. The State also does not appear to be disputing that the market fee/cess is payable. In fact, the Assistant Government Pleader appearing on behalf of the respondents admits that between the period 1985 to 1989 market fee/cess has been levied but instead of allowing the petitioner no. 1 to collect it, the market fee has been collected by the State government on behalf of the petitioner no.1. Since the market fee/cess is payable and has already been collected by the government on

behalf of the petitioner no.1, it has no authority to retain the market fee/cess with itself. It must be paid to the petitioner no.1.

5. Learned counsel for the petitioners submit that the petitioners have been deprived of the use of market fee/cess already collected by the government for several years and it should be granted interest. The market fee/cess levied by the petitioner no.1 is used for the purpose of providing facilities in the market area and it is used only for the purposes of the Act and for no other purpose. Learned counsel for the petitioners submit that on account of paucity of funds, the petitioner no.1 is required to borrow on interest money from the financial institutions and other government bodies. To illustrate the petitioners' counsel hands in a copy of the letter dated 23rd March 2005 written by the Maharashtra State Agricultural Marketing Board (Federation), Pune under which a loan of Rs. 85,00,000/- was sanctioned to it at the rate of interest of 8 % p.a. The petitioners say that therefore a reasonable interest should be awarded to the petitioners. We are of the view that a reasonable interest should be awarded to the petitioners because the money has been already been collected and used by the State government without any

authority of law. In the circumstances, we feel it appropriate to award interest at 6 % p.a. from the date of collection of market fee/cess till the date of payment.

6. For these reasons, the petition is allowed. The impugned communication dated 20th May, 1998 is quashed and set aside and the respondents are directed to refund to the petitioner no.1 the entire amount of market fee/cess collected by it during the period 1985 to 1989 in respect of the agricultural produce sold in the fair price shops in the market area of the petitioner no. 1 i.e. to refund Rs.22,21,329.75. with interest thereon at 8 % p.a.from the date of collection till the date of payment. We grant to the respondents eight weeks time for making of the payment.

(D.G. KARNIK, J) **(S.B.MHASE, J)**